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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/726,718	12/03/2003	Shi-Qiu Zhang	F6181(C)	6371
201	7590	09/14/2006	EXAMINER PRATT, HELEN F	
UNILEVER INTELLECTUAL PROPERTY GROUP 700 SYLVAN AVENUE, BLDG C2 SOUTH ENGLEWOOD CLIFFS, NJ 07632-3100			ART UNIT 1761	PAPER NUMBER

DATE MAILED: 09/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/726,718	Applicant(s) ZHANG ET AL.	
	Examiner Helen F. Pratt	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>4-21-05; 11-10-05; 4-7-04</u> | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1-2, 4-6, 11, 15, 16 are rejected under 35 U.S.C. 102(a) as being anticipated by Knueven (6,620,445).

Knueven discloses a lemonade beverage composition as in claims 1, 2, 4, 5, 6, 11, 15, 16, containing water and alkali metal bisulfate (sodium bisulfate). The sodium bisulfate is used as an acidulant in food (abstract and col. 8, lines 1-21). The sodium bisulfate has a pKa of 1.99. No citric acid is seen in the composition (col. 8, lines 1-12).

Claims 1, 6, 10, 11, 16 are rejected under 35 U.S.C. 102(a) as being anticipated by Hu, Y et al. (XP-002315839).

Hu et al. disclose a composition containing minerals and pure water and juice with hydrochloric acid as in claims 1, 6, 10, 11, 16 (abstract).

Claims 1, 2, 4, 6 are rejected under 35 U.S.C. 102(a) as being anticipated by Prepared Foods.

Prepared foods disclose as in claims 1, 2, 4, 6, that it is known to use sodium acid sulfate (sas) in beverages containing tea. The antimicrobial agent is monoprotic and ^{is} sodium bisulfate (sas), which has the claimed pka of under 2.6 as above. .

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 13, 14, 15, 17, 19, 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wei et al. (7,060,301) in view of Kneuvan and Hu .

Wei et al. disclose an antimicrobial composition, which can be used in a beverage (abstract). The process as in claim 17 contains the composition (claim 13) which is heated for at least 5 seconds at a temperature of from 0 to 100 C. (col. 37, lines 10-17, col. 38, lines 1-20). The claims differ from the reference in whether the correct pKa is disclosed by the reference. Nothing is seen that the antimicrobial composition has a pKa of more than 3 or greater than 6 . Kneuvan and Hu disclose that the claimed pKa's are known in beverages as above, (claim 19) and that the use of sodium bisulfate is known (claim 15). Heating any beverage composition to pasteurization temperatures is extremely well known. No citric acid is disclosed in Kneuvan and Hu as in claim 20. Therefore, it would have been obvious to heat a beverage as disclosed by Wei in the compositions and processes of Kneuvan and Hu.

Nothing new is seen in using known types of packaging as in claim 14, which are commonly used for beverages. Therefore, it would have been obvious to use known packaging materials in the process and composition of the combined references.

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As the references to Kneuvan and Hu et al. disclose beverages without citric acid as in claim 20, it would have been obvious to heat a beverage as disclosed by Wei et al. without citric acid since heating is a common way of killing germs.

Claims 7, 8, 9, 10, 11, 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Prepared Foods in view of Wei et al. .

Prepared Foods disclose that it is known to use SAS with tea. Claims 7 and 8 further require particular amounts of tea solids, and claim 9 that a precursor can be used and claims 10 and 11, that the beverage is not sweetened or carbonated and claim 12 that a particular pH is used. However, it would have been within the skill of the ordinary worker to use particular amounts of tea solids and to sweeten or carbonate as required and to use a particular pH in order to provide an acceptable beverage. Therefore, it would have been obvious to vary the above parameters to make an acceptable tea beverage.

Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Prepared Foods as applied to claims 7, 8, 9, 10, 11, 12 above, and further in view of Wei et al.

As Wei et al. disclose that it is known to heat treat a beverage which effectively kills germs, it would have been obvious to heat treat in the process of claim 18 to kill germs.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kneeven as applied to claims 1-2, 4-6, 11, 15, 16 above, and further in view of Selsted et al. (5,324,716).

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Selsted et al. disclose that it is known to use tryptophan-rich peptides exhibiting antimicrobial activity in foods (abstract and col. 12, lines 1-4). Therefore, it would have been obvious to use an amino acid containing microbial composition as shown by Selsted et al. in the beverage of Knueven for its known function as a microbial agent.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 571-272-1404. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hp 9-11-06


HELEN PRATT
PRIMARY EXAMINER